

8
No. 92-741

Supreme Court, U.S.
FILED

MAY 13 1993

OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1992

—
FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER

v.

JOHN H. MEYER, ET AL.

—
ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

—
JOINT APPENDIX
—

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& Bergesz*
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—
PETITION FOR CERTIORARI FILED: OCTOBER 27, 1992
CERTIORARI GRANTED: MARCH 22, 1993
—

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV-83-2204-JPV

MEYER

v.

FIDELITY SAVINGS AND LOAN ASSOCIATION, ET AL.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1983		
May 2	1	COMPLAINT: summons issued. Demand for Jury Trial.
Jul 5	5	Defendants Citicorp and Fidelity's ANSWER TO COMPLAINT; Demand for Jury Trial. (Citicorp Savings and Fidelity Savings)
Oct 3	11	Defendant Yang, ANSWER TO COMPLAINT.
	12	Plaintiff's notice of motion for leave to file amended complaint. Hearing set for 10-31-83 @ 10:30 a.m.
	13	—memo of points & authorities in support #12.
	14	—affidavit in support of #12
	15	—affidavit of service by mail.
Oct 17		REASSIGNED PURSUANT TO ORDER OF THE ASSIGNMENT COMMITTEE

DATE	NR.	PROCEEDINGS
1983		
Nov 21	16	Plaintiff's Notice of Motion for Leave to File Amended Complaint 12-7-83 at 10:00a.m.
Dec 5	17	Plaintiff's Memo of Points and Authorities in support of #16
	7	18 ORDER: Plaintiff is given leave to file amended complaint, Defendant to answer within ten day of service JPV
		19 Plaintiff's 1ST AMENDED COMPLAINT, Demand for Jury Trial
1984		
Jan 30	21	Defendant Yang's ANSWER TO 1ST AMENDED COMPLAINT, Demand for Jury Trial
Feb 8	22	Defendants Fidelity and Citicorp's ANSWER TO 1ST AMENDED COMPLAINT Demand for Jury Trial
Mar 16	23	Defendant Federal & Pattullo's Notice and Motion to Dismiss Counts One Through Eight of 1st Amended Complaint 5-3-84 at 10:00a.m.
	24	Defendants Federal & Pattullo's Motion to Dismiss Counts One Through Eight
	25	Defendants Federal & Pattullo's Memo in support of #24
Apr 26	27	Defendant U.S.'s Notice of Joindure in Motion to Dismiss
May 3	28	Plaintiff's Opposition to Defendant FSLIC & Pattullo's Motion to Dismiss Counts 1-8
Jul 11	32	STIPULATION AND ORDER: Motion to Dismiss is Continued from 6-7-84 Until After Filing of Amended Complaint, Complaint to be Filed by 6-22-84
	33	Plaintiff's 2ND AMENDED COMPLAINT

DATE	NR.	PROCEEDINGS
1984		
Jul 16	34	Defendant U.S.'s ANSWER TO 2ND AMENDED COMPLAINT
	27	36 Defendants Federal & Pattullo's Notice of Motion to Dismiss Counts I-III, V & VIII of 2nd Amended Complaint 9-20-84 at 10:00a.m.
		37 Defendants Federal & Pattullo's Motion to Dismiss
		38 Defendants Federal & Pattullo's Memo in Support of #37
	31	39 Defendant U.S.'s Notice of Motion to Dismiss Count Three, 9-20-84 at 10:00a.m.
		40 Defendant U.S.'s Memo in Support of Motion to Dismiss
Aug 14	43	Defendant Yang's ANSWER TO 2ND AMENDED COMPLAINT—Demand for Jury Trial
Sep 6	44	Plaintiff's Opposition to Defendant FSLIC and Pattullo's Motion to Dismiss
	45	Plaintiff's Opposition to Defendant U.S.'s Motion to Dismiss
	14	47 Defendants Fidelity and Citicorp's ANSWER TO 2ND AMENDED COMPLAINT—Demand for Jury Trial
	20	48 Defendants' Reply Memo in Support of Motion to Dismiss Counts 1-III, V & VIII of 2nd Amended Complaint
Sep 24	49	Defendant U.S.'s Reply in Support of Motion to Dismiss Count 3
1985		
Jan 23	52	ORDER GRANTING MOTION TO DISMISS IN PART: Count I is Dismissed as plaintiff's

DATE	NR.	PROCEEDINGS
1985		
		claims respecting the breach of alleged contract for continued employment; Counts II & III are Dismissed; Count V is Dismissed as to plaintiff's claims concerning alleged breach of the covenant of good faith and fair dealing and his tort claims; In all other respects the complaint stands JPV —Entered in Civil Docket 1-24-85 Clerk
May 3	55	Plaintiff's Notice of Motion for Modification of Order of 1-23-85 6-27-85 to 10:00a.m.
	56	Plaintiff's Motion for Modification of Order
Jun 13	58	Defendants U.S.'s Memo in Opposition to Plaintiff's Modification of Order
	59	Defendant Yang's Response to Plaintiff's Motion for Modification of Order
	60	Defendant Fidelity's Opposition to Plaintiff's Motion for Modification of Order
17	61	Defendant Yang's Notice of Motion and Motion to Dismiss—Memo of Points and Authorities 7-18-85 at 10:00a.m.
Dec 26	80	STIPULATION AND ORDER OF DISMISSAL: Defendant Linda Tsao Yang is dismissed without prejudice each party to bear own costs JPV
1986		
Mar 21	86	Defendants' Fidelity et al's Notice of Motion and Motion for Summary Judgment, 4-18-86 at 10:00a.m.
	87	Defendants' Memo of Points and Authorities in Support of #86
	88	Defendants' Declaration of Robert J. Yorio in Support of #86

DATE	NR.	PROCEEDINGS
1986		
Apr 4	95	Plaintiff's Response to Motion for Summary Judgment by Citicorp & Fidelity
	96	Plaintiff's Declaration of Blair W. Lindsay in Opposition to Motion for Summary Judgment by Citicorp and Fidelity
11	97	Defendants Citicorp & Fidelity's Reply Memo Supporting Motion for Summary Judgment
	98	Defendants' Supplemental Declaration of Robert J. Yorio in Support of Motion for Summary Judgment
Jul 29	101	ORDER: re Sua Sponte Reconsideration of Jan. 23, 1985 Dismissal Order, parties are to submit supplemental memoranda concerning the propriety of the dismissal of Counts I and III in accordance with the following schedule: original moving parties memo due 9-4-86, plaintiff's opposition due 9-18-86, reply due 9-25-86, matter set for hearing on 10-9-86 at 10:00a.m. JPV
Aug 15	102	MEMORANDUM OF OPINION AND ORDER: Fidelity Federal and Citicorp's Motion for Summary Judgment is GRANTED, Fidelity Savings' Motion for Summary Judgment is DENIED (see Order) JPV Entered in Civil Docket 8-19-86 Copies to Counsel Clerk
Sep 4	103	Defendant U.S.'s Supplemental Brief Re Propriety of Dismissal of Counts I and III
	104	Defendants Federal Savings & Pattullo's Supplemental Memo in Support of Motion to Dismiss Counts I and III of Second Amended Complaint

DATE	NR.	PROCEEDINGS
1986		
18	106	Plaintiff's Supplemental Memo of Points and Authorities, Counts I and III
25	107	Defendant U.S.'s Supplemental Reply Brief
Sep 25	108	Defendants Federal Savings and Pattullo's Reply Memo in Support of Motion to Dismiss Counts I and III of the Second Amended Complaint
Oct 9	109	MINUTES: (C/R Sara Larkin) Sua Sponte reconsideration of prior order, prior order vacated in part, case continued to 12-11-86 for further status JPV
Nov 10	110	REPORTER'S TRANSCRIPT, 4-18-86
Dec 5	113	MEMORANDUM OF OPINION AND ORDER: Count I of the Second Amended Complaint is reinstated in its entirety against defendants FSLIC and Pattullo and Count III remains dismissed against Defendants U.S., FSLIC and Pattullo JPV Entered in Civil Docket 12-8-86 Clerk
1987		
Oct 20	132	Plaintiff's joint pretrial statement.
1989		
Feb 16	140	STIPULATION AND ORDER: Trial will be held before a U.S. Magistrate JPV
Jun 20	150	Defendants Federal Savings et al's Notice of Motion for Summary Judgment or for Partial Summary Adjudication of Issues 7-21-89 at 9:30a.m.
	151	Defendants Federal Savings et al's Memo of Points and Authorities in Support of #150
	152	Defendants Federal Savings et al's Declaration of Daniel Johnson in Support of #150

DATE	NR.	PROCEEDINGS
1989		
Jun 20	154	Defendant Fidelity Savings' Notice of Motion and Motion for Summary Judgment 7-21-89 at 9:30 a.m.
	155	Defendant Fidelity Savings' Memo of Points and Authorities in Support of #154
	156	Defendant Fidelity Savings' Declaration of Robert Yorio in Support of #154
Jul 11	157	Plaintiff's Memo of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment or for Summary Adjudication
	158	Plaintiff's Declaration of Catherine Douat-Murray in Opposition to Motion for Summary Judgment
	159	Plaintiff's Declaration of Adolph Meyer in Opposition to Motion for Summary Judgment
	160	Plaintiff's Declaration of John Meyer in Opposition to Motion for Summary Judgment
17	163	Plaintiff's Memo of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment
	165	Defendants Fidelity Savings and Loan's TRIAL BRIEF
18	169	Defendants Federal Savings and Pattullo's Reply to #157
	170	Defendants Federal Savings and Pattullo's Trial Brief
	171	Defendants Proposed Jury Instructions
	173	Plaintiff's Proposed Jury Instructions
	174	Plaintiff's Trial Brief
Jul 14	176	REPORTER'S TRANSCRIPT. 10-9-86

DATE	NR.	PROCEEDINGS
1989		
	21 177	Defendant Fidelity's Reply Memo in Support of Motion for Summary Judgment
	28 178	MAGISTRATE'S MINUTES: (C/R tape 745) —Defendant's Motion for Summary Judgment, DENIED FJW (Mag.)
Aug 21	179	PRETRIAL CONFERENCE ORDER (see Order) FJW (Mag.)
	181	Plaintiff's Proposed Jury Instructions
Sep 6	188	MEMO OF DECISION: Defendants Fidelity et al's Motions for Summary Judgment is GRANTED as to Issue Nos. 2 and r and DENIED and to the remaining issues FJW (Mag.) Entered in Civil Docket 9-7-89 clerk
	11 190	Defendants Federal Savings et al's Supplemental Trial Brief
	191	MAGISTRATE'S MINUTES: (C/R Larry White) Trial Began, further Trial set for 9-12-89 at 9:30a.m. FJW (Mag.)
	192	Joint Stipulated Statement of Undisputed Facts
12	193	MAGISTRATE'S MINUTES: Further Trial (C/R Larry White) further trial set for 9-13-89 at 9:30a.m., Claim of Immunity asserted by FSLIC, DENIED FJW (Mag.)
13	194	MAGISTRATE'S MINUTES: (C/R Larry White) Further Trial, continued to 9-14-89 at 9:30a.m. for Further Trial FJW (Mag.)
14	195	MAGISTRATE'S MINUTES: (C/R Larry White) Further Trial, continued to 9-18-89 at 9:45a.m. for further trial FJW (Mag.)

DATE	NR.	PROCEEDINGS
	18 196	Defendants Federal Savings and Pattullo's Memo of Points and Authorities in Support of Supplemental Proposed Jury Instructions
	197	Defendants Federal Savings and Pattullo's Supplemental Proposed Jury Instructions
	198	MAGISTRATE'S MINUTES: (C/R Larry White) further trial, further trial set for 9-19-89 at 9:30a.m. FJW (Mag.)
Sep 19	201	MAGISTRATE'S MINUTES: (C/R Larry White) Trial—Plaintiff's closing statements FJW (Mag.)
	202	TITLE SHEET—List of Witnesses and Exhibits
	203	SPECIAL VERDICT
	204	Proposed Instructions Refused or Otherwise Covered by Court in Instructions
Sep 20	205	Instructions Given by Court
	206	JUDGMENT ON JURY VERDICT: The jury be a special verdict having found that plaintiff is entitled to damages in the sum of \$130,000.00 as a result of his discharge from employment by defendants, and having further found that defendant Pattullo is immune from liability under the doctrine of qualified immunity Judgment is entered in the sum of \$130,000.00 in favor of Plaintiff and against defendant FSLIC only and Judgment is entered in favor of defendant Pattullo and against the plaintiff FJW (Mag.) Entered in Civil Docket 9-21-89 Copies to Counsel Clerk

DATE	NR.	PROCEEDINGS
1989		
Sep 11	207	Plaintiff's Motion in Limine re Measure of Damages for Constitutional Claims Under Bivens
	29	210 Defendant Federal Savings' Notice of Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial, 11-2-89 at 9:30a.m.
		211 Defendant FSLIC's Memo of Points and Authorities in Support of #210
Oct 24	214	Plaintiff's Opposition to Motion for Judgment Notwithstanding the Verdict
	26	215 Plaintiff's Opposition to Motion for Judgment Notwithstanding the Verdict
	27	216 Defendant FSLIC's Reply Memo in Support of #210
Nov 3	217	MAGISTRATE'S MINUTES: (C/R tape 767) Defendant's Motion for Judgment Notwithstanding the Verdict/New Trial, DENIED FJW (Mag)
Nov 17	221	ORDER: FSLIC's Motion for Judgment Notwithstanding the Verdict is DENIED, and FSLIC's Motion for New Trial is DENIED FJW (Mag.)
Dec 14	222	Defendant FSLIC's NOTICE OF APPEAL—no fee—Notice to USCA and Counsel

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 89-16695

MEYER

v.

FSLIC

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
4/20/90	Filed original and 15 copies John H. Meyer's first brief on cross-appeal, (Informal: n) of 16 pages and 1 excerpts of record; served on 4/19/90 [89-16695, 90-15025] (sm) [89-16695 90-15025]
6/22/90	Filed original and 15 copies FSLIC, second brief on cross-appeal (Informal: n) of 48 pages and 1 excerpts of record; served on 6/20/90 [90-15025, 89-16695] (sm) [89-16695 90-15025]
8/10/90	Filed original and 15 copies John H. Meyer in 90-15025, John H. Meyer in 89-16695 third brief on cross-appeal (Informal: no) of 33 pages and 5 copies excerpts of record; served on 8/10/90 [90-15025, 89-16695] (vt) [89-16695 90-15025]
9/17/90	Filed original and 15 copies FSLIC in 89-16695, FSLIC in 90-15025 reply brief, (Informal: n) of 21 pages; served on 9/14/90. [89-16695, 90-15025] (dl) [89-16695 90-15025]
2/14/91	CALENDARED: SAN FRAN April 5, 1991 9:00 am Courtroom 100 McAllister [89-16695, 90-15025] (aw) [89-16695 90-15025]

DATE	PROCEEDINGS
4/5/91	ARGUED AND SUBMITTED TO Thomas TANG, Jerome FARRIS, Dorothy W. NELSON [89-16695, 90-15025] (mt) [89-16695 90-15025]
9/13/91	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Thomas TANG; Jerome FARRIS; Dorothy W. NELSON, author.) FILED AND ENTERED JUDGMENT. [89-16695, 90-15025] (ck) [89-16695 90-15025]
9/30/91	Filed motion & clerk order (vt) granting FSLIC an ext of time to file petition for rehearing with suggestion for rehearing en banc to and including Oct. 28, 1991. (Motion recvd 9/23/91) [89-16695, 90-15025] (vt) [89-16695 90-15025]
10/23/91	Filed FSLIC in 90-15025 motion to extend time to file petition for rehearing until 11/4/91 [89-16695, 90-15025] served on 10/22/91 [2016480] PANEL (vt) [89-16695 90-15025]
11/5/91	Filed order (Thomas TANG, Jerome FARRIS, Dorothy W. NELSON,) : The motion, filed October 23, 1991, for an ext of time to and including November 4, 1991 in which to file a petition for rehearing and suggestion for rehearing en banc is GRANTED. in 89-16695, 90-15025 [89-16695, 90-15025] (vt) [89-16695 90-15025]
11/6/91	[2023011] Filed original and 40 copies of FSLIC petition for rehearing with suggestion for rehearing en banc 15 p.pages, served on 11/4/91 PANEL & ALL ACTIVE JUDGES [90-15025, 89-16695] (vt) [89-16695 90-15025]
4/1/92	Filed order (Thomas TANG, Jerome FARRIS, Dorothy W. NELSON,) : Within fourteen days of the date of this order, aplt/Cross-Aple shall file a response to the Petition for Rehearing and Suggestion for Rehearing En Banc, filed Novem-

DATE	PROCEEDINGS
	ber 6, 1991, by Aple/Cross-Aplt. IT IS SO ORDERED. [89-16695, 90-15025] (vt) [89-16695 90-15025]
5/15/92	Filed Plf-Aplt/Cross-Aple (Meyer) response to the petition for rehearing ans suggestion for rehearing en banc. served on 5/15/92 PANEL & ALL ACTIVE JUDGES [90-15025, 89-16695] (vt) [89-16695 90-15025]
6/29/92	Filed order (Thomas TANG, Jerome FARRIS, Dorothy W. NELSON,) : The petition for rehearing is denied and the suggestion for rehearing en banc is rejected. [2016480-1] [89-16695] (vt) [89-16695]
7/30/92	MANDATE ISSUED COSTS TAXED IN THE AMOUNT OF \$264.40 [89-16695, 90-15025] (vt) [89-16695 90-15025]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 90-15025

MEYER

v.

FSLIC

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1/9/90	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. setting cross appeal briefing schedule as follows: Fee payment is due 1/23/90 in 90-15025,; CADS due 1/23/90 for Gennaro A. Filice in 90-15025; first cross-appeal brief is due 4/20/90 in 90-15025, in 89-16695; second cross-appeal brief is due 5/30/90 in 90-15025, in 89-16695; third cross-appeal brief is due 6/29/90 in 90-15025, in 89-16695; optional cross-appeal reply brief is due 7/13/90 in 90-15025, in 89-16695; [90-15025, 89-16695] (rv) [89-16695 90-15025]
4/20/90	Filed original and 15 copies John H. Meyer's first brief on cross-appeal, (Informal: n) of 16 pages and 1 excerpts of record; served on 4/19/90 [89-16695, 90-15025] (sm) [89-16695 90-15025]
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9/17/90	Filed original and 15 copies FSLIC in 89-16695, FSLIC in 90-15025 reply brief, (Informal: n) of 21 pages; served on 9/14/90. [89-16695, 90-15025] (dl) [89-16695 90-15025]
2/14/91	CALENDARED: SAN FRAN April 5, 1991 9:00 am Courtroom 100 McAllister [89-16695, 90-15025] (aw) [89-16695 90-15025]
4/5/91	ARGUED AND SUBMITTED TO Thomas TANG, Jerome FARRIS, Dorothy W. NELSON [89-16695, 90-15025] (mt) [89-16695 90-15025]
9/13/91	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Thomas TANG; Jerome FARRIS; Dorothy W. NELSON, author.) FILED AND ENTERED JUDGMENT. [89-16695, 90-15025] (ck) [89-16695 90-15025]
9/30/91	Filed motion & clerk order (vt) granting FSLIC an ext of time to file petition for rehearing with suggestion for rehearing en banc to and including Oct. 28, 1991. (Motion recvd 9/23/91) [89-16695, 90-15025] (vt) [89-16695 90-15025]
10/23/91	Filed FSLIC in 90-15025 motion to extend time to file petition for rehearing until 11/4/91 [89-16695, 90-15025] served on 10/22/91 [2016480] PANEL (vt) [89-16695 90-15025]
11/5/91	Filed order (Thomas TANG, Jerome FARRIS, Dorothy W. NELSON,) : The motion, filed October 23, 1991, for an ext of time to and including November 4, 1991 in which to file a petition for

DATE	PROCEEDINGS
	rehearing and suggestion for rehearing en banc is GRANTED. in 89-16695, 90-15025 [89-16695, 90-15025] (vt) [89-16695 90-15025]
11/6/91	[2023011] Filed original and 40 copies of FSLIC petition for rehearing with suggestion for rehearing en banc 15 p.pages, served on 11/4/91 PANEL & ALL ACTIVE JUDGES [90-15025, 89-16695] (vt) [89-16695 90-15025]
11/19/91	Filed Appellant John H. Meyer and FSLIC in 90-15025's joint motion to hold the case in abeyance until 30 days after FDIC's petition for rehearing en banc has been determined. PANEL [90-15025] served on 11/18/91 [2027491] resent 7/30/92 (vt) [90-15025]
4/1/92	Filed order (Thomas TANG, Jerome FARRIS, Dorothy W. NELSON,): Within fourteen days of the date of this order, aplt/Cross-Aple shall file a response to the Petition for Rehearing and Suggestion for Rehearing En Banc, filed November 6, 1991, by Aple/Cross-Aplt. IT IS SO ORDERED. [89-16695, 90-15025] (vt) [89-16695 90-15025]
5/15/92	Filed Plf-Aplt/Cross-Aple (Meyer) response to the petition for rehearing and suggestion for rehearing en banc. served on 5/15/92 PANEL & ALL ACTIVE JUDGES [90-15025, 89-16695] (vt) [89-16695 90-15025]
7/30/92	MANDATE ISSUED COSTS TAXED IN THE AMOUNT OF \$264.40 [89-16695, 90-15025] (vt) [89-16695 90-15025]

UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT
STATE OF CALIFORNIA

Case No. C 83 2204 JPV
(Civil)

JOHN H. MEYER, PLAINTIFF

vs.

FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELTY
FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN
FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP
BANK; LINDA TSAO YANG, CALIFORNIA SAVINGS AND
LOAN COMMISSIONER; MR. DURKIN, CHIEF DEPUTY
SAVINGS AND LOAN COMMISSIONER; FEDERAL SAVINGS
AND LOAN INSURANCE CORPORATION, a corporate in-
strumentality of the United States of America, as re-
ceiver for FIDELITY SAVINGS AND LOAN ASSOCIATION;
FEDERAL SAVINGS AND LOAN INSURANCE CORPORA-
TION, a corporate instrumentality of the United States
of America; THE UNITED STATES OF AMERICA; ROB-
ERT L. PATTULLO; JOHN DOE and RICHARD ROE;
inclusive, DEFENDANTS

SECOND AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1. Plaintiff files this Second Amended Complaint and invokes the jurisdiction of this Court under 28 USC § 1343 to obtain costs of suit, reasonable attorneys fees

and damages suffered him and caused by defendants' violation of his rights as guaranteed in the First and Fourteenth Amendments to the Constitution of the United States and by Federal law, particularly the Civil Rights Act, 42 USC § 1983 and § 1985.

2. The violation of plaintiff's civil rights as alleged herein occurred in the State of California.

3. Jurisdiction is also sought under 28 USC § 1332. Plaintiff is a citizen of the State of Virginia. Defendants, FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; and CITICORP SAVINGS AND LOAN are corporations, incorporated under the laws of California, having their principal places of business in the State of California. LINDA TSAO YANG; MR. DURKIN; JOHN DOE and RICHARD ROE, are all citizens of the State of California and employed by the State of California. ROBERT L. PATTULLO is a citizen of the District of Columbia and employed by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION. Defendant CITICORP BANK is a corporation incorporated under the laws of New York and having its principal place of business in New York. The matter in controversy, exclusive of interest and costs, exceeds the sum of ten thousand dollars (\$10,000.00).

4. Jurisdiction is sought against defendants ROBERT L. PATTULLO; THE UNITED STATES OF AMERICA; FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER FOR FIDELITY SAVINGS AND LOAN ASSOCIATION (hereinafter sometimes referred to as "FSLIC AS RECEIVER"), and FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (hereinafter sometimes referred to as "FSLIC"), under 28 USC § 1331. A federal question exists wherein plaintiff seeks to recover costs of suit, reasonable attorneys' fees and damages suffered by him and caused by such defendants' violation of his rights as

guaranteed in the First and Fourteenth Amendments to the Constitution of the United States and by Federal law, particularly the Civil Rights Act, 42 USC § 1983 and § 1985.

5. Jurisdiction is also sought against defendants, ROBERT L. PATTULLO; FSLIC and FSLIC AS RECEIVER, under 12 USC § 1730(k).

6. Plaintiff seeks jurisdiction against defendants, ROBERT L. PATTULLO; THE UNITED STATES OF AMERICA; FSLIC and FSLIC AS RECEIVER, under 28 USC § 1346(b), having complied with 28 USC § 2671 *et seq.*

7. Jurisdiction is also sought against defendants, ROBERT L. PATTULLO; THE UNITED STATES OF AMERICA; FSLIC and FSLIC AS RECEIVER, under 28 USC § 1491 and 28 USC § 1391.

8. Jurisdiction is also sought against defendants, ROBERT L. PATTULLO; THE UNITED STATES OF AMERICA; FSLIC and FSLIC AS RECEIVER, under 5 USC § 702 and 5 USC § 703.

9. Jurisdiction is also sought against defendants, FIDELITY SAVINGS AND LOAN ASSOCIATION, FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP BANK; LINDA TSAO YANG, CALIFORNIA SAVINGS AND LOAN COMMISSIONER; MR. DURKIN, CHIEF DEPUTY SAVINGS AND LOAN COMMISSIONER; FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a corporate instrumentality of the United States of America, as receiver for FIDELITY SAVINGS AND LOAN ASSOCIATION; FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a corporate instrumentality of the United States of America; THE UNITED STATES OF AMERICA; ROBERT L. PATTULLO; JOHN DOE and RICHARD ROE, inclusive under 28 USC § 2201.

PARTIES

10. Plaintiff JOHN H. MEYER is a citizen of the State of Virginia and resides at Route 2, Box 209, City of Charlottesville, County of Albemarle, State of Virginia.

11. Defendants FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN OF SAN FRANCISCO; and CITICORP SAVINGS AND LOAN are corporation organized and existing under the laws of the State of California with principal places of business within that state.

12. Defendants LINDA TSAO YANG; MR. DURKIN; JOHN DOE and RICHARD ROE are citizens of the State of California and at all times herein mentioned were employed by the State of California.

13. Defendant ROBERT L. PATTULLO is at all times mentioned herein employed by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION acting as special representative for the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS RECEIVER FOR FIDELITY SAVINGS AND LOAN ASSOCIATION.

14. Defendant CITICORP BANK is a corporation at all times mentioned herein incorporated under the laws of the State of New York and having its principal place of business in New York.

15. Defendants FSLIC AS RECEIVER and FSLIC at all times mentioned herein were corporate instrumentalities of the defendant UNITED STATES OF AMERICA.

16. At all times herein mentioned, each defendant was the agent, servant and employee of the other defendants, and in doing the things hereinafter mentioned was acting in the scope of its respective authority as such agent, servant and employee and with the permission and consent of the other defendants.

FACTS GIVING RISE TO CLAIM

17. Plaintiff was employed by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association for over sixteen years, from 1966 to April 14, 1982. During such sixteen years of employment, plaintiff performed his duties in a proper and forthright manner, earning over three promotions until his final position from 1980 until 1982 as Executive Vice President of Branch Operations. During plaintiff's sixteen years of employment by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association, plaintiff received numerous commendations, wage increases, bonuses, and so forth, for his loyal and excellent service. Further, during such employment, plaintiff's superiors with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association made representations to plaintiff that his employment with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association was permanent and secure in light of his loyal and excellent service and that he would not be terminated from his employment with FIDELITY SAVINGS AND LOAN ASSOCIATION absent good cause.

18. During plaintiff's sixteen years of service with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association, plaintiff was employed pursuant to the guidelines set forth in the Fidelity Savings And Loan Personnel Policies and Procedures Manual. Such Fidelity Savings and Loan Personnel Policies and Procedures Manual, sets forth the specific reasons for and the procedure to terminate an employee of Fidelity Savings and Loan. Further, such Fidelity Savings and Loan Personnel Policies and Procedures Manual establishes that an employee of Fidelity Savings and Loan becomes a permanent employee of Fidelity Savings and Loan Association upon completion of a three month probationary period.

19. As will be more fully explained below, on or about June 1, 1981, FIDELITY SAVINGS AND LOAN ASSOCIATION granted plaintiff additional compensation under a Stock Appreciation Plan in exchange for plaintiff's loyal and excellent service during his past, present and future employment with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association. On or about February 24, 1982, FIDELITY SAVINGS AND LOAN ASSOCIATION and plaintiff entered into a written Employment Severance Pay contract. Both the Stock Appreciation Plan and the Severance Pay contract were designed by FIDELITY SAVINGS AND LOAN ASSOCIATION to compensate key permanent employees in exchange for such employees' past and future services with FIDELITY.

20. Throughout plaintiff's sixteen years of service with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association, FIDELITY SAVINGS AND LOAN ASSOCIATION had a specific policy on discharging officers and directors of FIDELITY SAVINGS AND LOAN ASSOCIATION. Such discharge policy was communicated to plaintiff by his superiors and enforced by plaintiff in conjunction with his job duties and responsibilities. During plaintiff's sixteen years of employment by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association, the discharge policy for officers and directors was that no officer or director would be discharged by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association without good cause.

21. The previously discussed representations, policies, and conduct of FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association, gave plaintiff a legitimate expectation of continued and permanent employment with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association.

22. Further, the previously discussed representations, policies and conduct of FIDELITY SAVINGS AND LOAN ASSOCIATION and/or its successor entities to said association, created an employment agreement between plaintiff and FIDELITY, and its successors. The terms of such employment agreement granted plaintiff the right to be employed by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association permanently, absent good cause for discharge, and prevented FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association from breaching such agreement by terminating plaintiff without good cause.

23. Defendants, and each of them, at all times herein mentioned, had notice of and knowledge about plaintiff's legitimate expectation of continued and permanent employment by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association.

24. Defendants, and each of them, at all times herein mentioned, had notice of and knowledge about the employment contract and the terms and limitations within such employment contract between plaintiff and FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association.

25. On or about February 24, 1982, at San Francisco, California, plaintiff and FIDELITY SAVINGS AND LOAN ASSOCIATION entered into a written employment severance contract, a copy of which is attached as Exhibit "A" and made a part hereof.

26. On or about June 1, 1981, FIDELITY SAVINGS AND LOAN ASSOCIATION, established a corporate policy that a Stock Appreciation plan would be provided as additional compensation to key employees in exchange for such employees' past and future services with FIDELITY SAVINGS AND LOAN ASSOCIATION. A copy of the Stock Appreciation Plan is attached as Exhibit "B" and made a part hereof, along with a

certificate showing that plaintiff received seven thousand (7,000) units of non-transferable stock rights.

27. At some time prior to October 1, 1981, FIDELITY SAVINGS AND LOAN ASSOCIATION adopted as corporate policy a Severance Plan as a term and condition of agreement with its officer-employees, a copy of which is attached hereto and marked as Exhibit "C". Plaintiff is informed and believes, and pursuant to that information and belief alleges that, pursuant to said Severance Plan that FIDELITY SAVINGS AND LOAN ASSOCIATION was to pay officer-employees six months severance pay on termination. Pursuant to this Severance Plan, plaintiff is entitled to the sum of twenty-three thousand five hundred dollars (\$23,500.00).

28. On or about April 13, 1982 defendants LINDA TSAO YANG, Savings and Loan Commissioner of the State of California, and her agents, MR. DURKIN, JOHN DOE and RICHARD ROE, obtained and served upon FIDELITY SAVINGS AND LOAN ASSOCIATION certain documents which liquidated that Association and giving to the State of California possession of all property, business and assets of FIDELITY SAVINGS AND LOAN ASSOCIATION.

29. Thereafter, on or about April 13, 1982, LINDA TSAO YANG, as Savings and Loan Commissioner of the State of California, appointed the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION as State Receiver for FIDELITY SAVINGS AND LOAN ASSOCIATION pursuant to California Financial Code § 9009 and § 9102.

30. FSLIC AS RECEIVER created FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO which assumed the assets and obligations of FIDELITY SAVINGS AND LOAN ASSOCIATION. In conjunction with the creation of FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO by FSLIC AS RECEIVER, FSLIC AS RECEIVER assigned to FSLIC certain liabilities for

unpaid wages and benefits to employees terminated in conjunction with the regulatory takeover of FIDELITY SAVINGS AND LOAN ASSOCIATION by defendants, and each of them.

31. On or about September 28, 1982, the assets and liabilities of FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO were transferred by FSLIC and FSLIC AS RECEIVER to CITICORP BANK. CITICORP BANK transferred the assets and liabilities of FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO to a wholly owned subsidiary of CITICORP BANK entitled CITICORP SAVINGS AND LOAN.

32. There exists in the State of California a right of employees to not be terminated from a long-term and permanent employment relationship absent good cause. A violation of this right constitutes a breach of the employment contract as well as a tort.

33. There exists a right in the State of California to not be terminated from employment for reasons that violate public policy. A breach of this right constitutes the tort of wrongful termination.

34. On or about April 13, 1982, the defendants LINDA TSAO YANG; MR. DURKIN; ROBERT L. PAT-TULLO; JOHN DOE; RICHARD ROE and FIDELITY SAVINGS AND LOAN ASSOCIATION; the FSLIC and FSLIC AS RECEIVER conspired to terminate plaintiff in violation of public policy and without just cause, and on information and belief, pursuant to said conspiracy, plaintiff was terminated because he was the brother of the President of FIDELITY SAVINGS AND LOAN ASSOCIATION, rather than for just cause.

35. On or about April 13, or April 14, 1982, plaintiff was terminated from his employment by defendants FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; LINDA TSAO YANG; MR. DURKIN; FSLIC; FSLIC AS RECEIVER;

ROBERT L. PATTULLO; JOHN DOE and RICHARD ROE without just cause and on information and belief, was terminated because he was the brother to the President of FIDELITY SAVINGS AND LOAN ASSOCIATION, and in violation of his Constitutional statutory, and legal rights.

36. Prior to said termination, plaintiff received no due process, no notice of said termination, no right to be heard, and no opportunity to respond to any charges of impropriety or that he was doing a less than acceptable job at his employment.

37. Plaintiff performed all conditions, covenants and promises required on his part to be performed in accordance with the terms and conditions of his employment contract, Stock Appreciation Plan, Severance Plan and Employment Severance Contract, throughout his sixteen years of employment by FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association.

38. In reliance on the terms and conditions of the Employment Severance Contract, Severance Plan, Stock Appreciation Plan, and implied employment contract, plaintiff was induced to maintain his employment at FIDELITY SAVINGS AND LOAN ASSOCIATION and/or successor entities to said association, through April 13, or April 14, 1982, as aforesaid.

39. Defendants, and each of them, knew or should have known that plaintiff would so rely and be so induced.

40. Defendants FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP BANK; FSLIC; and FSLIC AS RECEIVER are successors in interest to the assets and liabilities of FIDELITY SAVINGS AND LOAN ASSOCIATION.

41. When terminated from his employment, plaintiff was entitled to certain payments from FIDELITY SAV-

INGS AND LOAN ASSOCIATION including unpaid vacation benefits, Employment Severance contract benefits, the value of certain stock option rights under the Stock Appreciation Plan, monies under the Severance Plan, and other benefits totalling approximately one hundred four thousand five hundred dollars (\$104,500.00), all of which he has not received, to his damage in the sum of one hundred four thousand five hundred dollars (\$104,500.00).

42. A penalty, pursuant to § 203 of the California Labor Code is payable to plaintiff by reason of the willful failure of defendants, and each of them, to pay to plaintiff all wages due on the date of his termination of employment.

43. Plaintiff made demand of FSLIC to pay wages, employee benefits and penalties pursuant to § 203 of the California Labor Code. FSLIC and other named defendants in this action have refused or failed to pay to plaintiff such wages, employee benefits and penalties owed plaintiff and described hereinabove.

44. Since being terminated, plaintiff has been unable to procure like employment to that which he had prior to being wrongfully terminated and he believes that no such employment will be found in the future to his damage in the sum of seven hundred fifty thousand dollars (\$750,000.00).

45. In addition, plaintiff has suffered severe emotional distress as a result of the premises to his damage in the sum of two hundred fifty thousand dollars (\$250,000.00).

46. A claim under the California Tort Claims Act was filed on or about July 22, 1982, and was denied by the State Board of Control on October 5, 1982, with notice of said denial being sent on November 2, 1982.

47. A claim under the Federal Torts Claims Act was filed on or about February 28, 1983, and was denied by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION on August 23, 1983.

48. The plaintiff has, at all times, performed his employment in a proper and appropriate manner, undertaking all duties required of him and has complied with all obligations of his employment contract with FIDELITY SAVINGS AND LOAN ASSOCIATION and/or its successors.

49. If plaintiff had been given a fair and impartial hearing conducted in accordance with basic elemental due process, he would have demonstrated with good and substantial evidence, why he should not have been terminated from his employment.

50. As a result of the wrongful acts of the defendants, and each of them, plaintiff has been deprived of his employment and has suffered a loss of income, reputation, and opportunity to pursue his chosen career.

CLAIMS FOR RELIEF

Plaintiff incorporates in each of these counts the allegations of paragraphs 1 through 50 above.

COUNT I

51. The actions of defendants LINDA TSAO YANG, MR. DURKIN; ROBERT L. PATTULLO; FSLIC; FSLIC AS RECEIVER; FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; JOHN DOE and RICHARD ROE violated the Fifth and Fourteenth Amendments to the United States Constitution in that by acting in concert, and individually as more fully set forth above, they had deprived plaintiff, MR. JOHN H. MEYER, of property without due process, more specifically, the decision to breach the employment contract and wrongfully terminate plaintiff without due process:

(a) Was arbitrary and capricious in that it was based on unlawful and irrelevant criteria;

(b) Was made without affording him notice and a hearing conducted in accordance with generally accepted principles of elemental fairness and due process;

(c) Was based upon unlawful criteria which differed from that uniformly applied to management personnel in the employ of FIDELITY SAVINGS AND LOAN ASSOCIATION.

52. As a result of the acts of the defendants, and each of them, the plaintiff has been damaged as hereinabove described.

WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

COUNT II

53. The actions of defendants LINDA TSAO YANG; MR. DURKIN; ROBERT L. PATTULLO; JOHN DOE and RICHARD ROE violated the Fifth and Fourteenth Amendments to the United States Constitution in that by acting in concert and individually, as more fully set forth above, they have deprived plaintiff, MR. JOHN H. MEYER, of property without due process, and said acts were done under color of state law, thereby violating the laws of the United States of America and specifically the Civil Rights Act, Title 42 USC § 1983.

54. As a result of the conduct of the defendants, and each of them, plaintiff has been damaged as hereinabove described.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

COUNT III

55. The defendants LINDA TSAO YANG; MR. DURKIN; ROBERT L. PATTULLO; FSLIC; FSLIC AS RECEIVER; FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP BANK; UNITED STATES OF AMERICA; JOHN DOE and

RICHARD ROE, individually and in conspiring with each other, breached the employment contract between the plaintiff and FIDELITY SAVINGS AND LOAN ASSOCIATION, and its successors by terminating him without just cause, and in so doing, individually and in conspiring, committed the tort of breach of the implied covenant of good faith and fair dealing.

56. As a result of the conduct of the defendants, and each of them, plaintiff has been damaged as hereinabove described.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

COUNT IV

57. The defendants LINDA TSAO YANG; MR. DURKIN; FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN OF SAN FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP BANK; JOHN DOE and RICHARD ROE individually and acting in concert, as more fully set forth above, have interfered with the business relations of the plaintiff.

58. As a result of the conduct of the defendants, and each of them, plaintiff has been damaged as hereinabove described.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

COUNT V

59. The defendants FIDELITY SAVINGS AND LOAN ASSOCIATION; FSLIC; FSLIC AS RECEIVER; ROBERT L. PATTULLO; FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP BANK; JOHN DOE and RICHARD ROE breached the Severance Agreement, Severance Plan and the Stock Appreciation Plan with the plaintiff by failing to pay benefits owed to plaintiff upon termination of his

employment, which benefits are valued at approximately one hundred four thousand five hundred dollars (\$104,500.00), and in so doing, also breached the implied covenant of good faith and fair dealing found within such specific contractual and employment agreements and incurred penalties under the California Labor Code for willful failure to pay such wages and benefits.

60. As a result of the conduct of the defendants, and each of them, plaintiff has been damaged as hereinafter described.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

COUNT VI

61. The defendants LINDA TSAO YANG; MR. DURKIN; FIDELITY SAVINGS AND LOAN ASSOCIATION; FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN FRANCISCO; CITICORP SAVINGS AND LOAN; CITICORP BANK; JOHN DOE and RICHARD ROE conspired with each other to tortiously induce a breach of the plaintiff's employment contract.

62. As a result of the conduct of the defendants, plaintiff has been damaged as hereinabove described.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

COUNT VII

63. The defendants FIDELITY SAVINGS AND LOAN ASSOCIATION; JOHN DOE and RICHARD ROE breached the implied covenant in plaintiff's employment contract with FIDELITY SAVINGS AND LOAN ASSOCIATION, and its successors, that plaintiff would not be terminated without just cause.

64. As a result of the conduct of the defendants, plaintiff has been damaged as hereinabove described.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

COUNT VIII

65. Plaintiff is in doubt as to which defendants are liable to plaintiff for amounts due under the Stock Appreciation Plan, Severance Plan and Employment Severance Contract and which defendants possess the assets originally held by FIDELITY SAVINGS AND LOAN ASSOCIATION to satisfy the above stated liability.

66. It is necessary that this Court render a declaratory judgment adjudging the legal relations of plaintiff as to each of the named defendants, including, but not limited to, the rights and obligations of FSLIC AS RECEIVER respecting plaintiff pursuant to 17 USC § 1730 and related provisions, and the obligations of each of the named defendants to pay plaintiff's Stock Appreciation Plan, Severance Plan, Employment Severance Contract and penalties as aforesaid.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for judgment as follows:

- a. Compensatory damages to plaintiff in the total sum of one million one hundred four thousand dollars (\$1,104,000.00);
- b. Damages pursuant to the penalty provisions of the California Labor Code;
- c. For declaratory judgment adjudging the legal relations of plaintiff as to each of the named defendants arising out of the Stock Appreciation Plan, Severance Plan, Employment Severance Plan and penalties described hereinabove;
- d. Costs of suit incurred herein including reasonable attorneys' fees; and
- e. Such other and further relief as seems just and proper to this Court.

DATED:

HARDIN, COOK, LOPER, ENGEL
& BERGEZ

By: _____
GENNARO A. FILICE, III
Attorneys for Plaintiff
JOHN H. MEYER

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in this case.

DATED:

HARDIN, COOK, LOPER, ENGEL
& BERGEZ

By: _____
GENNARO A. FILICE, III
Attorneys for Plaintiff
JOHN H. MEYER

EXHIBIT A

EMPLOYMENT SEVERANCE CONTRACT

Pursuant to a resolution of the Board of Directors of Fidelity Savings and Loan Association (hereinafter "Association"), this Agreement has been entered into by the Association and JOHN H. MEYER (hereinafter "Employee").

WHEREAS, the Association acknowledges the past and present services of Employee to the Association; and

WHEREAS, the Association acknowledges further the possibility that the Association may be forced to merge, sell or otherwise cease operation as an independent entity; and

WHEREAS, Employee has agreed to continue employment with the Association until such an eventuality may occur;

NOW, THEREFORE, IT IS AGREED between Association and Employee that in consideration of Employee's continued employment, Association agrees to pay Employee the equivalent sum of one (1) year's compensation as severance pay in the event that the Association is subjected to a regulatory merger or take over

IT IS FURTHER AGREED that this Employment Severance Contract shall become null and void in the event that:

1. Employee is offered a comparable position and compensation by a successor company or receiver, to that position and compensation which Employee presently holds with Association. In determining whether the position and compensation offered the Employee are comparable, primary emphasis shall be placed on compensation. A position shall be considered comparable if it requires the same general skills, experience and expertise as required by Employee's present position; provided that, an offered position shall not be deemed not to be com-

parable merely because it is subordinate to or requires a sharing of responsibility with an employee of the successor company, or receiver, who holds the practical equivalent of Employee's present position; and

2. Employee remains employed by a successor company or receiver for a period of six (6) months from the date of the commencement of such employment.

IT IS FURTHER AGREED that severance compensation payable under this Contract shall be paid upon the earlier of:

1. The failure or refusal of the successor company or receiver to offer Employee a comparable position and compensation.

2. The involuntary termination of Employee by the successor company or receiver within six (6) months of the merger, sale or commencement of receivership proceedings, or their equivalent.

3. The involuntary demotion of Employee to a position or compensation not comparable with Employee's present position and compensation within six (6) months of the merger, sale, or commencement of receivership proceedings, or their equivalent.

IN WITNESS WHEREOF, the parties hereto have signed this Contract on the 24th day of February, 1982.

FIDELITY SAVINGS AND LOAN
ASSOCIATION

By /s/ Karen N. Manning
KAREN N. MANNING
Title Executive Vice President-
Secretary

"Association"

By /s/ John H. Meyer
JOHN H. MEYER
"Employee"

EXHIBIT B

Fidelity Savings and Loan Association
 Established 1921
 2000 Franklin Street
 Oakland, California 94612
 415 271 1700

A. C. Meyer, Jr.
 President

June 1, 1981

John H. Meyer

Dear Jack:

I am pleased to announce that the Board of Directors has approved a Stock Appreciation Plan to compensate key employees for their past efforts and to enable them to share in the future growth of Fidelity.

I want you to know that the Board of Directors recognizes and appreciates your contribution to the Company and the difficulties that the current economic conditions present to the fulfillment of your responsibilities. In order to show their appreciation in a material way, the Board has approved the Stock Appreciation Plan.

Briefly, under this Plan, you will be paid a cash bonus based on the increase in the price of Fidelity Financial Corporation's common stock during the term of the Plan times the number of units (equivalent to shares of stock) granted you. There is also a provision for a minimum payment in the event of a sale or merger of Fidelity. Attached is a detailed explanation of the Plan, together with an Example illustrating how the Plan works. As you will see, the figures used in the attached Example are purely hypothetical as the value of the stock could be higher or lower on the given date. Further, in any event, you will receive a minimum of \$3.00 per Unit, based on

your vested interest if the company is sold, merged or liquidated, or the value of the stock does not appreciate by \$3.00, assuming you have not left Fidelity prior to June 1, 1982.

The Company is not in a position to grant this to everyone, although we do appreciate each person's efforts. But, as this Plan includes only a few of the key employees, we must ask that you keep your participation confidential.

Thank you for your past efforts and continued support.

Sincerely,

/s/ A. C. Meyer, Jr.
 A. C. MEYER, JR.

EXAMPLES OF EXERCISE OF RIGHTS UNDER STOCK APPRECIATION PLAN

Date of Grant:	June 1, 1981
Number of Units:	1,000
Value per Unit at Grant Date:	\$ 6.00
Stock Prices:	
August 1, 1984	\$15.00
August 1, 1985	20.00
August 1, 1986	25.00
1. Employee claims appreciation on Units vested as follows:	
August 1, 1984—600 Units (3/5) at \$ 9 (\$15-6)	\$ 5,400
August 1, 1985—200 Units (1/5) at \$14 (\$20-6)	2,800
August 1, 1986—200 Units (1/5) at \$19 (\$25-6)	3,800
TOTAL APPRECIATION CLAIMED	<u>\$12,000</u>
2. Employee accumulates Units and claims appreciation on August 1, 1986:	
1000 Units at \$19 (\$25-6).....	<u>\$19,000</u>
3. Sale of Fidelity is consummated on July 31, 1983 for \$12 per share. Employee has claimed no appreciation:	
Employee receives the greater of:	
a. Units vested, 400 (2/5) at \$6 (\$12-6)	\$ 2,400
b. Total Units, 1,000 at \$3	3,000

EXPLANATION AND TERMS OF STOCK APPRECIATION PLAN

In a Stock Appreciation Plan employees are granted units equivalent to shares of a Company's stock at a stated value per unit and receive cash payments in the amount of any per share increase in the market price of the Company's stock over the issue price of the appreciation unit during the term of the Plan times the number of units granted and vested.

Under Fidelity's Plan, 1/5th of the total units granted vest in the employee on January 1, 1982, and 1/5th annually thereafter so the employee is fully vested 4 years and 7 months from the date of grant. Appreciation is measured by changes in the market price of Fidelity Financial Corporation's common stock. The Plan terminates one (1) year from the date of last vesting.

Employees may claim the appreciation on the vested portion of their units at any time during the term of the plan and can accumulate any or all of their vested units and claim the appreciation at the termination of the Plan.

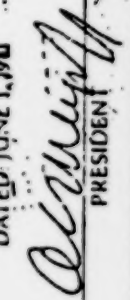
Employees terminating their employment with Fidelity at any time later than one (1) year after the original grant date, will be entitled to the greater of:

1. The remaining vested portion of their units, times the appreciation the market price per share represents over the unit grant value; or
2. The remaining vested portion of their units times \$3.00.

In the event of a merger or sale of Fidelity, employees are entitled to the greater of:

1. The remaining vested portion of their units times the appreciation the merger or sale price per share represents over the unit grant value; or
2. Their total units granted, less those on which they have claimed appreciation, times \$3.00.

This amount would be payable at the time a merger or sale was consummated.

CERTIFICATE No. <u>FS 04</u>	CERTIFICATE FOR <u>7,000</u> UNITS
FIDELITY FINANCIAL CORPORATION	
This certifies that <u>JOHN H. NEVER</u>	
is the recordholder of <u>SEVEN THOUSAND</u> Units of Non-Transferable Stock Appreciation Rights.	
DATED JUNE 1, 1994  PRESIDENT	
See Reverse for Terms and Conditions	

TERMS AND CONDITIONS

1. DATE OF GRANT—6/1/81
2. BASE PRICE—\$6.00
3. VESTING RIGHTS
 - 20%—1/1/82
 - 20%—1/1/83
 - 20%—1/1/84
 - 20%—1/1/85
 - 20%—1/1/86
4. TERM OF PLAN—6/1/81 to 12/31/86
5. EXERCISE RIGHTS
 - A. Accumulative during term of plan
 - B. Any and all of the vested rights are exercisable at the employee's option.
 - C. Vested rights exercisable within 90 days of termination of employment.
 - D. Vested rights exercisable by estate of employee within 90 days of death, if employee dies while employed by Fidelity Savings and Loan Association or its affiliates.
6. MINIMUM APPRECIATION

\$3.00 per unit minimum appreciation to be paid in the following circumstances:

 - A. In the event of a sale or merger on total units granted less number of units exercised. Payable at consummation of sale or merger.
 - B. In the event of termination of employment after June 1, 1982, on total unexercised vested units.

EXHIBIT C

FIDELITY SAVINGS

PERSONNEL POLICIES AND PROCEDURES

TERMINATION AND EXIT INTERVIEW

No. Section 3.07

Page 1 of 2

Date Rev. 10-81

1. *Involuntary Termination*

- a. Except during the probationary period or in cases of employee misconduct, supervisors are to advise employees of matters that might lead to subsequent release. Details of the warning(s) are recorded in written memoranda or on Counseling/Disciplinary Review forms.
 1. Upon release for any reason other than for flagrant misconduct, an employee is paid for any vacation earned but not yet taken. Any vacation taken in excess of the amount earned is deducted from the employee's final pay check. Vacation hours due, or vacation hours in excess are to be entered on the final Personnel Change Notice.
 2. If termination is not the fault of the employee, he or she may be eligible for State Unemployment Insurance provided completely by Association contributions.
- b. Employees, other than officers, terminated solely for the benefit of the Association (no negative

aspects of performance) receive severance pay according to the following schedule.

<u>Period of Employment</u>	<u>Severance Pay</u>
Less than one year of service	none
Continuous service of one year but but less than two	1 week
Continuous service of two years but but less than three	2 weeks
Continuous service of three years but but less than five	3 weeks
Continuous service of five years or more	to be determined by the President or his designee.

- c. Severance terms for officers who are terminated for the sole benefit of the Association are determined by the President or his designee. (Officers are department heads, and those who are Vice Presidents and above.)

Affidavit of Service by Mail (C. C. P. 1013a)

(Must be attached to original or a true copy of paper served)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

No. C 83 2204 JPV

LINDA D. JOHNSON being sworn, says that he is a citizen of the United States, over 18 years of age, a resident of ALAMEDA County and not a party to the within action.

That affiant's residence (business) address is

HARDIN, COOK, LOPER, ENGEL & BERGEZ
One Kaiser Plaza, Suite #2300
Oakland, California 94612

That affiant served a copy of the attached

**SECOND AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

by placing said copy in an envelope addressed to

SEE ATTACHED SERVICE LIST

which envelope was then sealed and postage fully prepaid thereon, and thereafter was on June 22, 1984, deposited in the United States mail at OAKLAND. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 1984 at OAKLAND, California.

/s/ Linda D. Johnson (Signature)
LINDA D. JOHNSON

SERVICE LIST

William French Smith
U.S. Attorney General
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Order No. C-83-2204 JPV

JOHN H. MEYER, PLAINTIFF

vs.

FIDELITY SAVINGS & LOAN ASSOCIATION, ET AL.,
DEFENDANTS

ORDER GRANTING MOTION TO DISMISS IN PART

[Filed Jan. 23, 1985]

This matter came on regularly for hearing on September 27, 1984, the Honorable J.P. Vukasin, Jr., presiding. After duly considering the oral and written arguments, the court makes the following determinations.

FACTS

On April 13, 1982, the California Savings & Loan Commissioner seized the assets and liabilities of Fidelity Savings & Loan Association (Fidelity), and in order to liquidate Fidelity, appointed the Federal Savings & Loan Insurance Corporation (FSLIC) as state receiver. At the same time, the FSLIC was also appointed sole federal receiver by the Federal Home Loan Bank Board (FHLBB), pursuant to 12 U.S.C. § 1729(c)(2). The FSLIC appointed Robert Pattullo as its Special Representative. That same day, immediately following the seizure, plaintiff John Meyer was terminated from his employment at Fidelity by the FSLIC and Pattullo.

The FSLIC, a federal corporate instrumentality, was therefore the assignee and conservator of certain alleged

liabilities for unpaid wages and benefits of terminated Fidelity employees, pursuant to the regulatory takeover. Other defendants are successor corporate entities to whom Fidelity's assets and liabilities have been transferred, as well as employees of the State of California who were involved in the initial liquidation of Fidelity and the appointment of the FSLIC as state receiver.

Fidelity's distressed financial condition was precipitated by its administration of questionable loan policies.¹ Plaintiff Meyer, the brother of Fidelity's president, was employed by Fidelity from 1966 until the takeover, serving as Executive Vice President of Branch Operations during the last two years.

In his Second Amended Complaint, Meyer contends that over the course of his sixteen years of employment, an implied contract for permanent employment arose between himself and Fidelity, such that Meyer was guaranteed he would not be terminated without a showing of "good cause." As evidence of this agreement Meyer points to the commendations, wage increases and bonuses he received, his participation in a Stock Appreciation Plan, the existence of a written severance agreement between himself and Fidelity, and Fidelity's specific discharge policies. Fidelity's policies and conduct allegedly gave plaintiff a legitimate expectation of continued and permanent employment, and he was denied minimal due process rights by the manner of his termination. Further, Meyer claims that all the defendants tortiously breached the implied contractual right of good faith and fair dealing by terminating him without just cause and by failing to pay certain benefits owed upon termination. Meyer also alleges violations of his civil rights, and seeks a declaratory judgment ordering the rights and obligations of the parties regarding the amounts allegedly due under

¹ See *Fidelity Savings & Loan Association v. Federal Home Loan Bank Board*, 689 F.2d 803, 805 (9th Cir. 1982).

certain agreements formed during the course of Meyer's employment by Fidelity.

Defendants FSLIC, Pattullo, and the United States have moved to dismiss the complaint for lack of subject matter jurisdiction, and for failure to state a claim upon which relief can be granted. Federal Rules of Civil Procedure 12(b)(1), (6).

DISCUSSION

COUNT I

In Count I of his Second Amended Complaint, plaintiff Meyer alleges that FSLIC and Pattullo violated the Fifth and Fourteenth Amendments to the United States Constitution by depriving him of property without due process of breaching the implied employment contract and wrongfully terminating him.

It is essential to note at the outset that plaintiff has alleged deprivations of two distinct property rights. Insofar as plaintiff contends that the actions of the FSLIC and Pattullo deprived him of his right to receive certain payments that had accrued prior to his termination, such as unpaid wages, stock options, and vacation benefits, plaintiff's constitutionally based cause of action must survive defendants' motion to dismiss. Meyer has sufficiently established that an implied employment agreement between himself and Fidelity existed at the time of the regulatory takeover. He has therefore succeeded in establishing the source by which his claim of entitlement to unpaid benefits is created and defined. Such an interest in property is fully protected by the Constitution and the laws of the State of California, and may not be stricken or truncated by the action of a federal instrumentality, without according the holder of such property the minimal right to due process of law.

Plaintiff's further contention, that the implied contract created a legitimate entitlement to continued and per-

manent employment which is also subject to due process protection, presents an altogether different issue. In order to invoke procedural due process guarantees, a person must have a "legitimate claim of entitlement" to a property interest that stems from "an independent source such as state law." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Meyer asserts that he had more than a mere desire or abstract need for continued employment, but rather an enforceable expectation of it, based on the length of his employment, promotions and wage increases received, company policies regarding discharge, "promises" of permanent employment, and extension of benefits to him by his superiors at Fidelity.

California Labor Code Section 2922 provides that "an employment, having no specified term, may be terminated at the will of either party on notice to the other." However, there have been a number of judicially created exceptions to this doctrine that limit an employer's power of dismissal.

Plaintiff has pleaded a number of allegations which, if found to be true, will support a finding that defendants breached the implied covenant of good faith and fair dealing. In *Cleary v. American Airlines, Inc.*, 111 Cal. App. 3d 443 (1980), a judgment of dismissal was overturned where plaintiff adequately alleged a viable cause of action for wrongful discharge based upon breach of an implied covenant of good faith and fair dealing, where the employee demonstrated longevity of service and reliance on employer policies and procedures. Here, Meyer has alleged performance of commendable service for sixteen years, as well as the existence of and communication to him of specific promises of continued, secure employment, as well as policies governing employee termination only upon a showing of good cause. The *Cleary* court emphasized that its findings only pertained to defendants' demurrers, and did not in any way shift the ultimate burden of proof borne by plaintiff. *Id.* at 456.

Plaintiff has also sufficiently stated a claim of entitlement based on breach of an implied-in-fact covenant to terminate only for just cause. The criteria applied in analyzing this exception to California's statutory "termination-at-will" provision include duration of employment, commendations and promotions received, lack of criticism of work performed, assurances given, and employer's policies. *Pugh v. See's Candies, Inc.*, 116 Cal. App. 3d 311 (1981).

Defendants' reliance on *Newfield v. Insurance Company of the West*, 156 Cal. App. 3d 440 (1984), is misplaced. In *Newfield*, the court dismissed a wrongful termination suit based on the implied contract exception because plaintiff's only allegation was the promise of a "permanent career." Unlike Meyer, the plaintiff in *Newfield* did not allege the existence of personnel policies that would support a cause of action, he had worked for his employer a mere two years, and his work had been frequently criticized.

Meyer and Fidelity entered into an Employment Severance Contract a mere seven weeks prior to the federal receivership. Plaintiff contends this agreement evidences the covenant between himself and Fidelity to terminate only for a good cause. Defendants urge this Court to find that Meyer was motivated to create this instrument by his fear and knowledge that his employment would not survive the imminent regulatory takeovers. Certainly this inference is extremely compelling, but does not represent the only plausible conclusion. For example, it is possible to infer that the agreement represents an incentive by Fidelity to retain key personnel. It cannot be summarily accorded defendants' interpretation at this stage of the litigation.

B. Effect of Federal Regulation

Plaintiff has stated facts supporting the existence of an implied employment agreement with Fidelity, based upon judicial expansion of California's termination at will statute. But before this right can ripen into a legitimate claim of entitlement to permanent employment, such as would support and sustain plaintiff's claims for damages due to lost income, it is necessary to assess the impact of the federal regulatory interest in this area.

The legislation creating the FSLIC conferred a great deal of discretion and power to ensure the safety and soundness of the savings and loan industry. 12 U.S.C. §§ 1724 *et seq.* The fact that Fidelity was not a federally-chartered institution does not diminish this interest. The insurance provided by FSLIC is extended to savings accounts in state-chartered associations as well. The financing of the construction and purchase of homes depends in large part upon the financial integrity of FSLIC and its continuing ability to insure the stability of the entire savings and loan industry. When the Bank Protection Act of 1968² was passed, FSLIC's receivership powers with regard to state-chartered institutions were expanded, because "the FSLIC has a vital stake in the proper management and disposal of the assets" of an association in receivership. S. Rep. No. 1263, 90th Cong., 2nd Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News, at p. 2536. (S. Rep.) The FSLIC was authorized to liquidate an institution in default as orderly a fashion as possible, to maintain public confidence, and "to make such other disposition of the matter as it deems to be in the best interests" of the institution, its savers, and the FSLIC. 12 U.S.C. § 1729(c)(3)(B).

The court need not rely upon these generally-stated grants of power, however, to determine the propriety of the actions taken by FSLIC and Pattullo during the

² P. L. No. 90-389; 82 Stat. 294 (1968).

emergency conditions present on April 13, 1982. Employment contracts entered into between insured institutions and their employees are specifically governed by 12 CFR § 563.39, in effect at the time of Meyer's termination,³ which provides in pertinent part as follows:

An insured institution shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. . . . [T]he making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the insured institution or could materially interfere with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment of an officer or employee of the institution. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term or does not contain an appropriate termination for cause provision.

Meyer argues that the terms of the regulation provide only subjective tests for determining whether his implied contract represents an "unsafe or unsound practice" on

³ The regulation was subsequently amended. The present version, 12 CFR § 563.39(a), effective 1983, provides in part that "[a]ll employment contracts shall be in writing and shall be approved specifically by an institution's board of directors." Meyer does not allege that his contract for "permanent" employment was committed to writing, nor that it was specifically approved by Fidelity's board. Rather, he claims that certain writings are *evidence*, of an implied contract for permanent employment with Fidelity. Had this regulation been in force at the time of Meyer's termination, our inquiry would be at an end, for Meyer's claim of entitlement would rest upon a contract that is null and void in terms of providing a specific term of employment. See 47 Fed. Reg. 17472, April 23, 1982.

the part of Fidelity's board, and that the court is precluded from making factual determinations at this point in the proceedings.

The court is prohibited from making factual determinations only where more than one reasonable inference may be drawn. If the alleged "contract" were upheld as valid, it is clear that Fidelity's directors had bound themselves in a way that hamstrung their ability to operate the institution in a proper manner. The federal regulation explicitly curtails the discretion of an insured institution's directors in this narrow area pertaining to employment contracts. If the directors, as Meyers alleges, impliedly agreed to employ Meyer "permanently," that contract's "excessive term" represents material interference with the directors' discretion. Even as a matter of basic business judgment, the Severance Contract upon which Meyer heavily relies to establish the existence of an implied-in-fact agreement contains absolutely no incentive for Meyer to do all that was possible to rectify the situation that eventually led to the receivership. The Severance Contract benefits accrued whether Fidelity merged, refinanced, or was liquidated. The only consideration offered in return was Meyer's promise to "continue employment" with Fidelity. And yet, by plaintiff's own admission, the implied employment contract was created over a period of continuous service, prior to the parties' execution of the Severance Contract in February, 1982. Therefore, as Meyer had bound himself to "continue employment" at Fidelity prior to its execution, the Severance Contract does not contain any new consideration that would serve to satisfy the basic requirements for finding a valid contract, namely, an exchange of mutually enforceable promises.

Despite Meyer's contentions that he himself was not responsible for the conditions that led to Fidelity's default, his own exhibits attached to the Second Amended Complaint describe him as a "key employee," entitling

him to certain benefits not available to all employees. The authority granted to the FSLIC upon takeover of an insured institution is at least as broad as that power that rests with the directors of a privately-run corporation. Plaintiff cannot, on the one hand, argue that the FSLIC somehow abridged the business judgment of Fidelity's directors by terminating him, while on the other hand, attack the FSLIC for exercising *its* lawful statutory and regulatory authority to organize a new financial institution by dismissing Fidelity's senior management.

While FSLIC's actions were drastic, we do not find in its choice of remedies any element of abuse of discretion, lack of legal support or absence of factual justification, sufficient to lead to the conclusion that plaintiff had sustained an actionable deprivation of constitutional rights. We agree with defendants' assertion that the FSLIC's mandate in regulating a failing insured institution cannot be subject to any efforts by that institution's management to secure and entrench its own position.

While California law has been interpreted as granting "at will" employees certain process and tenure rights, state law cannot provide any independent source of power that would hinder FSLIC's mandate to manage an ailing savings and loan association. Preemption occurs where the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Therefore, insofar as plaintiff claims that he had an enforceable contract that created a legitimate expectation of continued employment at Fidelity, that contract is void, and insufficient to sustain a claim of a constitutionally protected property interest.

C. *Pattullo's Immunity*

In the Second Amended Complaint, (¶¶ 13, 16) Meyer admits that Pattullo acted within the scope of his authority as an employee of FSLIC. Defendants argue

that Pattullo, as a federal official, enjoys qualified immunity from civil suit based on alleged constitutional violations. They properly cite the prevailing policy consideration pervading this doctrine, that the public interest requires freedom of decision for its government servants to enforce the laws. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982). However, the Supreme Court has consistently held that this doctrine is prematurely applied at this stage of the pleadings. In *Schuer v. Rhodes*, 416 U.S. 232 (1974) involving immunity for state officials, the Court overturned the Rule 12(b)(1) dismissal of a case seeking monetary damages for civil rights violations precisely because the issue facing a district court in reviewing the sufficiency of a complaint "is not whether a claimant will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Id.* at 236. Authorities cited by defendants deal with liability of federal officials for *tort* claims, or else define "early resolution" of the claims as occurring at the summary judgment stage.

Therefore, Meyer's constitutional claim against Pattullo as to Count I must survive, to the same limited extent as that against the FSLIC.

Count II

In Count II, Meyer alleges that the defendants, acting individually and in concert, violated his civil rights by their wrongful breach and termination.

The Civil Rights Act 42 U.S.C. § 1983, applies to agencies and individuals acting under color of state law. The conspiratorial acts alleged by Meyer are vague and mostly conclusionary. Notwithstanding this problem, plaintiff alleges that FSLIC and Pattullo were acting as "State Receivers," under color of California law, thereby making § 1983 applicable.

The responsibility for regulation of state savings and loan associations has been divided between the states and

the federal government. S. Rep., at 2538. While the legislative history contemplates action by the State to place the association in custody prior to federal intervention, it is equally clear that the FSLIC, whose sole power and authority is by virtue of federal legislation, cannot act under color of state law.

Meyer's Second Amended Complaint, at ¶ 13 alleges that Pattullo "is at all times . . . employed by the [FSLIC] acting as special representative for the [FSLIC] [Fidelity]." Section 1983 does not address liability of federal officials, nor do the conspiracy statutes in this area provide a cause of action against a federal official acting under color of federal law.

Therefore, the federal defendants are not subject to suit under 42 U.S.C. § 1983, and this Count must be dismissed for failure to state a claim upon which relief can be granted.

Count III

In Count III, Meyer contends that defendants FSLIC, Pattullo, and the United States, acting individually and in conspiracy with each other and with the other defendants, tortiously violated the implied covenant of good faith and fair dealing by terminating him without good cause, in breach of the alleged employment contract he had with Fidelity.

Resolution of the motions to dismiss this Count must be based on the interplay between the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671 *et seq.*, and FSLIC's enabling legislation. The latter statute provides that the FSLIC has power "to sue and be sued." 12 U.S.C. § 1725(c)(4). Plaintiff argues that any sovereign immunity enjoyed by the federal defendants is therefore waived by the operation of this provision.

The FTCA, at 28 U.S.C. § 2679(a), was made the exclusive remedy with respect to alleged torts by federal government agencies, irrespective of claims invok-

ing the district court's general jurisdiction over civil actions complaining of torts by the United States or its employees.

Plaintiff relies on *First Empire Bank v. FDIC*, 572 F. 2d 1361 (9th Cir. 1978), to support his argument that the FTCA is inapplicable. There, the limitations imposed by the FTCA on suits brought against federal instrumentalities were ignored. However, the issue of suability was not addressed in *First Empire*, and that decision contravenes a 1974 Ninth Circuit opinion, *Safe-way Portland E.F.C.U. v. FDIC*, 506 F. 2d, 1213, holding that the FTCA is the exclusive remedy governing tort suits brought against federal agencies. *Id.* at 1215. *First Empire's* aberrational nature with respect to this issue is underscored by the subsequent refusal by many Ninth Circuit district courts to follow it,⁴ as well as contrary results reached by at least three other federal circuits.⁵ Therefore, we turn now to the FTCA provisions.

The FTCA defines the limits of the Congressional waiver of sovereign immunity against the United States and its agents and instrumentalities in tort claims. Jurisdiction is limited to cases where the Government has consented to be sued. *Morris v. United States*, 521 F.2d 872 (9th Cir. 1975). If Meyer's tort claim falls within one of the exceptions to the waiver, as delineated in 28 U.S.C. § 2680, then the district court lacks subject matter jurisdiction over the claim.

Plaintiff has satisfied one jurisdictional prerequisite for initiation of a suit under the FTCA by presenting his tort claim to the FSLIC, and thereafter receiving the

⁴ See, e.g., *First Savings & Loan Association v. First Federal Savings & Loan Association*, 531 F. Supp. 251, 254 (D. Hawaii 1981).

⁵ See *Edelman v. FHA*, 382 F.2d 594 (2d Cir. 1967); *FDIC v. Citizens Bank & Trust Co.*, 592 F.2d 364 (7th Cir. 1979); *Freeling v. FDIC*, 221 F. Supp. 955 (W.D. Okl. 1962), *aff'd* 326 F.2d 971 (10th Cir. 1963).

agency's denial. 28 U.S.C. § 2675(a). (See plaintiff's Second Amended Complaint, at ¶ 47).

The FSLIC is clearly a federal agency within the meaning of 28 U.S.C. § 1346(b). The extent of its liability under claims sounding in tort is only as extensive as the FTCA allows. A federal agency is not suable *eo nomine* under the FTCA—rather, an action can only be brought against the United States. 28 U.S.C. § 2679 (a); *Newberg v. FSLIC*, 317 F. Supp. 1104, 1106 (N.D. Ill. 1970). As the FTCA precludes actions brought directly against the FSLIC, FSLIC's defenses based on immunity need not be addressed. FSLIC must be dismissed as a defendant in Count III, for failure to state a claim upon which relief can be granted.

28 U.S.C. § 2680(a) provides an exception to the waiver of immunity as to claims based upon the exercise of discretionary functions or duties on the part of the federal agency or employee. Plaintiff contends that a motion to dismiss is not the appropriate time in which to examine the discretionary function exception, because the determination of whether or not the claim is actionable depends on whether the discretionary decision was made at the "operational" or at the "planning" level. *Dalehite v. United States*, 346 U.S. 15 (1953).

Plaintiff's assertion that there is no express statutory provision allowing FSLIC to discharge an employee is correct.⁶ As noted, however, FSLIC and its Special Representative have been granted broad discretion to carry out their statutory responsibilities in restoring a seriously troubled insured institution. 12 U.S.C. § 1729(b), (f). The kind of mechanical test that plaintiff proposed for determining the amenability of a federal agency and its employees to a tort action has recently been rejected in *United States v. Varig Airlines*, 81 L. Ed. 2d 660 (1984),

⁶ Distinguish the provisions of the Federal Home Loan Bank Act, 12 U.S.C. § 1432(a), authorizing those Banks "to dismiss at pleasure" certain employees as they see fit.

where the Supreme Court held "it is the nature of the conduct, not the status of the actor, that governs whether the discretionary function exception applies." *Id.* at 674. The court finds that the challenged acts of Pattullo and the FSLIC are of the nature and quality that Congress intended to shield from tort liability in enacting 28 U.S.C. § 2680(a), to prevent the hindrance or thwarting of the government agency's ability to fulfill its statutory and regulatory mandate. The exception covers not only the action taken by governmental agencies, but also action taken by subordinates, such as Pattullo, who carry out discretionary policy judgments in accordance with official directions. Their conduct, as well, cannot be actionable, when performed pursuant to their mission to regulate the business affairs of a federally insured institution. As the activities of FSLIC and Pattullo can be characterized as "discretionary," this court lacks jurisdiction to entertain Meyer's tort claims, and they must be dismissed.

Count V

In Count V, Meyer claims that the FSLIC and Pattullo, *inter alia*, breached the Severance Agreement, Severance Plan, and Stock Appreciation Plan by failing to pay benefits owed to plaintiff upon termination of his employment with Fidelity, and in so doing, breached the implied covenant of good faith and fair dealing.

Insofar as this count claims interference by federal agencies and officials with rights held by Meyer pursuant to his alleged employment contract with Fidelity, it is barred by the application of 28 U.S.C. § 2680(h). This provision of the FTCA excerpts from the waiver of sovereign immunity "any claim arising out of . . . interference with contract rights." Further, as analyzed under the discussion of Count III, the district court has no jurisdiction over tort-based claims where the FSLIC and Pattullo have not consented to be sued, 28 U.S.C. §§ 2679(a), 2680(a), and where the discretionary func-

tion exception has been found applicable. Given these conclusions, we find no need to address the merits of plaintiff's argument that the FSLIC was a "party" to the alleged contract between Meyer and Fidelity.

Plaintiff will still have recourse to recover any benefits legitimately due him for services rendered pursuant to the alleged agreements he executed with Fidelity, prior to his termination, by maintaining his action against the remaining non-federal defendants. Further, as discussed under Count I, *supra*, plaintiff's constitutional claim with regard to this property survives against these moving parties.

Count VIII

In Count VIII, Meyer prays that the court render a declaratory judgment regarding the legal relations of plaintiff to each of the named defendants. As noted in the discussion under Count I, plaintiff has stated a cognizable cause of action against FSLIC and Pattullo with regard to certain benefits that had allegedly accrued prior to his termination. Insofar as plaintiff seeks a judicial determination of the identities of those entities potentially responsible for the satisfaction of those claims, this cause of action must survive defendants' motion to dismiss.

CONCLUSION

In accordance with the foregoing:

- (1) Count I is hereby DISMISSED as to plaintiff's claims respecting the breach of an alleged contract for continued employment;
- (2) Count II is DISMISSED;
- (3) Count III is DISMISSED;
- (4) Count V is DISMISSED as to plaintiff's claims concerning alleged breach of the covenant of good faith and fair dealing and his tort-based claims;

(5) In all other respects the complaint stands.
IT IS SO ORDERED.

Dated: Jan. 22, 1985

/s/ J. P. Vukasin, Jr.
J. P. VUKASIN, JR., Judge
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 83-2204 JPV

JOHN N. MEYER, PLAINTIFF

v.

FIDELITY SAVINGS AND LOAN ASSOCIATION, ET AL.,
DEFENDANTS

**MEMORANDUM OF OPINION AND ORDER
REINSTATING DEFENDANTS FSLIC AND
PATTULLO UNDER COUNT I OF THE
SECOND AMENDED COMPLAINT**

[Filed Dec. 5, 1986]

On October 9, 1986, this matter came before the Court, the Honorable J.P. Vukasin, Jr., presiding for hearing on the Court's *sua sponte* reconsideration of its January 23, 1985 Order Dismissing Counts I and III of the Second Amended Complaint against defendants United States, FSLIC and Robert Pattullo. Appearing on behalf of plaintiff was Gennaro A. Filice III, appearing for defendant United States was Lynn Richardson, AUSA, and appearing on behalf of defendants FSLIC and Pattullo was Daniel Johnson, Jr. At the conclusion of oral arguments the Court issued an oral ruling which is memorialized as follows:

FACTS

As a result of questionable loan policies, Fidelity Savings & Loan ("Fidelity Savings") was in financial difficulties in early 1982. On April 13, 1983, the California

Savings & Loan Commissioner seized Fidelity Savings' assets and appointed the Federal Savings & Loan Corporation ("FSLIC") as state receiver. At the same time, the FSLIC also was appointed the sole federal receiver by the Federal Home Loan Bank Board, pursuant to 12 U.S.C. section 1729(c)(2); Robert Pattullo was appointed the FSLIC's special representative.

That same day, plaintiff Meyer was terminated from his job at Fidelity Savings by the FSLIC acting through Pattullo. Fifty-six year old Meyer, vice president in charge of branch operations, had been employed by the savings and loan for sixteen years. Meyer was offered no reason for the firing, nor was he given an opportunity for a hearing. Also on April 13, 1983, the newly-created federally-chartered Fidelity Federal Savings & Loan ("Fidelity Federal") and the FSLIC as receiver, executed an "Acquisition Agreement", in which Fidelity Federal and the FSLIC as receiver purchased virtually all of Fidelity Savings' assets and assumed virtually all of its liabilities. The next day, a "Receivers Agreement" was executed by which the FSLIC acquired the remaining assets of Fidelity Savings and expressly assumed and undertook to pay all liabilities of the FSLIC as receiver which were not assumed by Fidelity Federal the day before. On September 28, 1982, the FSLIC and FSLIC as receiver transferred the assets and liabilities of Fidelity Federal to Citicorp Bank, which in turn transferred the assets and liabilities to its wholly-owned subsidiary, Citicorp Savings and Loan. The former Fidelity Savings is now known as Citicorp Savings and Loan.

Count I of the Second Amended Complaint alleges that the FSLIC and Pattullo, by their actions, abrogated plaintiff's Fifth and Fourteenth Amendment rights by depriving plaintiff of a valuable property interest without due process of law. Count III alleges against the FSLIC, Pattullo and the United States, tortious breach of an implied long-term employment contract and breach of an

implied covenant of good faith and fair dealing contained therein. On September 27, 1984, defendants FSLIC and Pattullo moved to dismiss Count I and the United States, the FSLIC and Pattullo moved to dismiss Count III. The matter was taken under submission and on January 23, 1985, this Court granted in part the motion to dismiss Count I and dismissed Count III in its entirety against all three movants.

In April, 1986 defendants Citicorp (as successor-in-interest to Fidelity Federal) and Fidelity Savings moved for summary judgment, which this Court granted as to Citicorp and denied as to Fidelity Savings. Prior to issuing that decision, this Court issued an Order Regarding Sua Sponte Reconsideration of its 1985 Order dismissing the FSLIC and Pattullo in part from Count I and dismissing the United States, the FSLIC and Pattullo *in toto* from Count III.

DISCUSSION

Count I

Plaintiff alleges that his termination violated the Fifth and Fourteenth Amendments by depriving him of a property right without the procedural due process to which he was entitled. A property interest, to warrant constitutional protection, must comprise a legitimate claim of entitlement and not a mere expectation of future benefits. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Legitimate claims to such property interests are created, not by the constitution, but by independent sources such as state law. *Id.* This Court recognizes that the violation of two distinct property rights is alleged in Count I. First, the plaintiff's right to receive benefits already earned (e.g., back wages, stock options and vacation pay) allegedly was violated. The portion of Count I dealing with this specific property right constitutes a proper claim, and this Court, in its Order of January 23, 1985, properly refused to dismiss this portion of the claim.

The second property right claimed by plaintiff arises out of his implied right to continued and permanent employment. Under certain facts, California common law recognizes the expectation of long-term employment as a cognizable claim of entitlement. This is an exception to the "at will" termination doctrine codified by California Labor Code § 2922. In *Cleary v. American Airlines, Inc.*, 111 Cal. App. 3d 443 (1980), a judgment of dismissal was overturned where plaintiff alleged a viable claim for wrongful discharge based upon a breach of the implied covenant of good faith and fair dealing. The court based its holding on the longevity of plaintiff's employment and on the employer's policy of terminating its employees only where good cause existed. Here, Meyer has alleged performance of commendable service for sixteen years along with the existence of Fidelity Savings' policy of termination only upon a showing of good cause. Plaintiff has stated a proper claim under the implied right to continued employment as described in *Cleary*.

Plaintiff has also sufficiently stated a claim based on an implied-in-fact covenant to terminate only for good cause. In *Pugh v. See's Candies, inc.*, 116 Cal. App. 3d 311 (1981), the court found that some employment contracts contain an implied promise that the employer will not act arbitrarily in its dealing with employees. There, the court found an exception to California's statutory "termination-at-will" provisions by giving weight to the factors of duration of employment, commendations and promotions received, lack of criticism, and assurances given by the employer that employment was secure. Here, plaintiff has alleged facts sufficient to state a claim under the *Pugh* factors. Recovery under the doctrines of *Cleary* and *Pugh* has been recognized in this circuit. *Russell v. Massachusetts Mutual Life Insurance Co.*, 722 F.2d 482, 492-93 (1983), *rev'd. on other grounds*, 105 S. Ct. 3085 (1985); *Cancellier v. Federated Department Stores*, 672 F.2d 1312, 1318 (1982), *cert. denied*, 103 S. Ct. 131 (1982).

Defendants contend that the state-created right to long-term employment is preempted by the federal statutes granting the FSLIC broad discretionary powers to rescue failing financial institutions. See 12 U.S.C. §§ 1464(d) (6)(c) and 1729(d); *North Mississippi Savings & Loan Association v. Hudspeth*, 756 F.2d 1096 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 790 (1986). In *Hudspeth*, a former bank president's compensation agreement with his former employer was terminated by the FSLIC after the institution went into receivership. The court upheld the dismissal of plaintiff's state-based contract claim. *Hudspeth*, however, is not dispositive of the issues before this Court. The plaintiff in *Hudspeth* never alleged a violation of his constitutional rights. *Hudspeth* is nothing more than a state court contract dispute which took on new dimensions when it was removed to federal court. *Id.* at 1099.

Defendants also urge this Court to shift Meyer to the "administrative remedy track" as was done in *Hudspeth*. *Id.* at 1103. Defendants contend that Meyer may petition the Federal Home Loan Bank Board for review, and then if not satisfied, may seek judicial review. Under 12 C.F.R. §§ 569a.8 and 549.4, a receiver must publish a notice to all creditors to present their claims, with proof, on prescribed forms, within 90 days of posting the notice. If the receiver disallows a claim, it must mail notice of denial and reasons therefor to the claimant by certified mail. Plaintiff claims that this required administrative procedure was not made available to him, and that defendants should be estopped from claiming that this procedure is now available, three years after the action was filed. Defendants never contended, until their reply brief was filed one week before this hearing, that any administrative remedy was made available to plaintiff. Nor have they provided this Court with any specifics as to where and when the required notice was published. This Court therefore holds that defendants are estopped from claim-

ing non-exhaustion of administrative remedies. Defendants' arguments under *Cleveland Board of Education v. Loudermill*, 84 L. Ed. 2d 494, 504 (1985), and *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), that the risk of plaintiff's erroneous termination is protected by the adequacy of post-termination remedies, are similarly unavailing. No such remedies or procedures were made available to plaintiff.

More to the point, the FSLIC simply does not have the power to abrogate constitutional rights. 12 U.S.C. §§ 1464 (d)(6)(c) and 1729(d) confer broad discretion upon the FSLIC, but all federal statutes are subject to constitutional limitations. *University For Women v. Hogan*, 458 U.S. 718, 733 (1981); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973); *United States v. Raub*, 637 F.2d 1205, 1207 (1980), *cert. denied*, 449 U.S. 922 (1980).

Relying on *Fidelity Financial Corp. v. Federal Home Loan Bank*, 792 F.2d 1432 (9th Cir. 1986), defendants contend that because no specific limiting criteria restrain the FSLIC's broad discretionary powers, no property interests are either created or abridged when the FSLIC acts. In *Fidelity Financial*, plaintiff sued the Federal Home Loan Bank ("Bank") after the Bank abruptly cut off regular loan advances it had been making to Fidelity Financial for a number of years. The court upheld the Bank's denial of funding and held that Fidelity Financial had no protectible property interest in receiving regular credit advances because the Bank was under no particularized standards or criteria that significantly constrained the Bank's discretion to deny advances. *Id.* at 1436. Defendants argue that the FSLIC's discretion is even broader than the Federal Home Loan Bank's and that Congress, when it created the FSLIC, intended that no specific limiting criteria should restrain the FSLIC's discretion in terminating employment contracts. *Fidelity Financial* does not apply to this case because the right

to future advances, if any, was created by the Bank, and arose directly out of the Bank's relationship with its customer, Fidelity Financial. In the case at bar, the FSLIC had no role in the creation of plaintiff's property interests. Meyer's property interest is created by California common law and arises out of the relationship between Meyer and defendants FSLIC and Pattullo's predecessor in interest. It is clear that by the Receivership Agreement, the FSLIC expressly assumed the obligations of Fidelity Savings. The FSLIC and Pattullo now claim, in effect, that they had the discretion to dishonor the assumed obligations simply because they were unconstrained by particularized standards. This argument is specious. Defendants have not shown federal interests sufficiently compelling to warrant the abrogation of plaintiff's constitutionally protected property rights.

Therefore, defendants FSLIC and Pattullo should be reinstated as defendants under Count I of the Second Amended Complaint. The previous finding that the written Severance Contract between Meyer and Fidelity Savings is void for lack of consideration should be vacated. Meyer's right to continued employment was always subject to termination for just cause. Meyer paid the consideration of continued satisfactory job performance in return for the benefits of the Severance Agreement. Even if the terms of the contract are deemed excessive under 12 C.F.R. § 563.39, the contract is invalid only to the extent of its excessiveness and not *in toto*.

Count III

Alleging tortious breach of the implied employment contract and the implied covenant of good faith and fair dealing, Count III was dismissed against defendants United States, FSLIC and Pattullo by this Court in its Order of January 23, 1985. Under U.S.C. § 2679(a), the Federal Tort Claims Act ("FTCA") is the exclusive remedy for torts committed by federal agencies. Nor-

mally, the government is immune from suit, but the FTCA grants federal jurisdiction where the government expressly waives its sovereign immunity and consents to suit. 28 U.S.C. § 2680 lists exceptions to the government's waiver of immunity. Under the facts of this case, two of these exceptions apply, and plaintiff is thereby precluded from suing the government for its potential torts. Section 2680(a) excludes suits based on "the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused."

This Court finds that the acts of Pattullo and the FSLIC were of the nature and quality that Congress intended to shield from tort liability under the test of *United States v. S. A. Empresa de Viacao Aerea Rio Grandeme*, 104 S. Ct. 2755, 2765 (1984), in which the nature of the conduct, rather than the status of the actor, governs whether the discretionary function exception applies. The second exception is found in 28 U.S.C. § 2680(h), which expressly excludes from the FTCA's limited waiver of immunity, claims "arising out of . . . interference with contract rights." Count III clearly alleges breach of the implied employment contract and the related tort of breach of the implied covenant of good faith and fair dealing. Plaintiff's claim under Count III is specifically excluded under both 28 U.S.C. 2860 subsections (a) and (h). Plaintiff in his supplemental memorandum, does not offer any argument that the exclusionary subsections (a) and (h) do not apply in this case. Therefore, this Court's ruling of January 23, 1985, should not be disturbed to the extent that Count III was dismissed against the United States, the FSLIC and Pattullo.

CONCLUSION

In accordance with the foregoing, IT IS HEREBY ORDERED that;

(1) Count I is reinstated in its entirety against defendants FSLIC and Pattullo, and

(2) Count III remains dismissed against defendants United States, the FSLIC and Pattullo.

IT IS SO ORDERED.

Dated: Dec 5, 1988

/s/ J. P. Vukasin, Jr.
J. P. VUKASIN, JR., Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Case No. C 83-2204 JPV

JOHN H. MEYER, PLAINTIFF

vs.

FIDELITY SAVINGS AND LOAN ASSOCIATION, ET AL.,
DEFENDANT(S)

**JOINT STIPULATED STATEMENT
OF UNDISPUTED FACTS**

[Filed Sep. 11, 1989]

Pursuant to this Court's request at the pre-trial conference, July 28, 1989, plaintiff, JOHN H. MEYER, and defendants, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION and ROBERT L. PATTULLO, have stipulated that the following facts be deemed established for the purposes of the trial in this matter:

1. The plaintiff, JOHN H. MEYER, worked at FIDELITY SAVINGS for sixteen years from 1966 through a portion of 1982. At the time he was terminated by the FSLIC, MR. JOHN MEYER was an Executive Vice President in charge of branch operations.

2. As Executive Vice President in charge of branch operations, JOHN MEYER was responsible for negotiating leases for savings and loan branches, certain personnel matters within the branches, and general administrative management of the branches. He also had other duties

specifically relating to the branch operations. JOHN MEYER did not at the time of his firing, nor prior to that time, have responsibility for FIDELITY's loan policies.

3. FSLIC is a corporate body and an agency and instrumentality of the United States organized and existing under 12 U.S.C. §§ 1725 *et. seq.* Pursuant to 12 U.S.C. § 1725(a), FSLIC operates under the direction of the Federal Home Loan Bank ("FHLBB") and has its principal office in the District of Columbia. At all times prior to plaintiff JOHN H. MEYER'S termination, FSLIC insured the deposits of FIDELITY SAVINGS.

4. In 1979 FIDELITY SAVINGS began experiencing severe financial difficulties as a result of prior speculative loan commitment practices. Gambling that interest rates would fall, FIDELITY SAVINGS had sold large amounts of short-term paper in order to obtain the funds to make long-term mortgage loans at the current market rates. When interest rates rose sharply, FIDELITY SAVINGS suffered substantial operating losses and a decrease in net worth because the earnings on its low yielding portfolio were less than the increasing cost of its short-term borrowing.

5. FIDELITY SAVINGS' net worth had eroded from Ninety-One Million Six Hundred Thousand and 00/100 (\$91,600.00) Dollars as of January 1981 to Nineteen Million Six Hundred Thousand and 00/100 (\$19,600,00.00) Dollars as of March 31, 1982. As of March 31, 1982 the association had averaged monthly operating losses of Five Million and 00/100 (\$5,000,000.00) Dollars and it was projected that the association would exhaust its entire net worth on or before July 1982. To meet its financial obligations, FIDELITY borrowed in excess of \$1.3 billion from the Federal Home Loan Bank of San Francisco by March 1982.

6. FIDELITY SAVINGS had booked net operating losses on One Million Four Hundred Thousand and

00/100 (\$1,400,000.00) Dollars for the year ending in December 31, 1980, Fifty Seven Million and 00/100 (\$57,000,000.00) Dollars for the year ending December 31, 1981 and Fifteen Million and 00/100 (\$15,000,000.00) Dollars for the three months ending March 31, 1982. During the week of April 5, 1982, FIDELITY SAVINGS depositors withdrew nearly Seventy Million and 00/100 (\$70,000,000.00) Dollars in deposits.

7. On April 13, 1982, due to FIDELITY SAVINGS' precarious financial position, the Savings and Loan Commissioner of the State of California appointed FSLIC as state receiver.

8. Plaintiff JOHN MEYER entered into an Employment Severance Contract on February 24, 1982.

9. At the close of business on April 13, 1982, the California Savings and Loan commissioner seized FIDELITY SAVINGS' assets, and appointed the FSLIC as state receiver. On that same date, the Federal Home Loan Bank Board appointed the FSLIC as federal receiver of FIDELITY SAVINGS replacing the state receivership by operation of federal law. MR. ROBERT PATTULLO was appointed as the FSLIC's special representative to handle the receivership of FIDELITY SAVINGS.

10. On April 13, 1982, JOHN MEYER, ADOLPH C. MEYER, KAREN MANNING and JOHN SERTICH were expressly terminated by the receiver acting through ROBERT L. PATTULLO. JOHN MEYER, along with others, was given a letter signed by ROBERT L. PATTULLO indicating that he was terminated.

11. After appointing the FSLIC as Receiver of FIDELITY SAVINGS the Federal Home Loan Bank Board created FIDELITY FEDERAL SAVINGS AND LOAN OF SAN FRANCISCO. Most of the assets and liabilities of FIDELITY SAVINGS were transferred to this new FIDELITY SAVINGS AND LOAN OF SAN FRANCISCO. FIDELITY FEDERAL was thereafter sold to CITICORP.

12. The receiver did not transfer to CITICORP any liabilities of FIDELITY SAVINGS as to JOHN MEYER, including any claim for wrongful termination or breach of an alleged severance pay contract to the extent such liabilities exist.

13. Prior to his termination, JOHN MEYER was not given an opportunity to either hear the reasons for his termination, or indicate to the FSLIC any reason why he should not be terminated. MEYER was not notified of any right to object to his termination by the FSLIC.

14. After his termination, the FSLIC did not give JOHN MEYER an opportunity to appeal the decision to terminate him, nor was he given an opportunity to present evidence as to why the decision should be changed.

15. JOHN MEYER did not apply for employment at FIDELITY SAVINGS' successor corporation. Further, JOHN MEYER was not hired by the successor corporation.

16. By virtue of the various transactions occurring after the seizure, the FSLIC assumed and undertook to pay and discharge valid liabilities, if, any arising out of JOHN MEYER's employment with or termination from FIDELITY.

Dated: September 9, 1989

COOLEY GODWARD CASTRO
HUDDLESTON & TATUM
DANIEL JOHNSON, JR.

By /s/ Daniel Johnson, Jr.
DANIEL JOHNSON, JR.
Attorneys for Defendant
Federal Savings and Loan
Insurance Corporation

Dated September 11, 1989

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By /s/ Robert J. Yorio
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Fidelity Savings and Loan
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Dated: September 7, 1989

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Attorneys for John H. Meyer

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-2204 JPV (FW)

JOHN H. MEYER, PLAINTIFF

v.

FIDELITY SAVINGS AND LOAN ASSOCIATION, ET AL.,
DEFENDANTS

SPECIAL VERDICT

[Filed Sep. 19, 1989]

1. Did John Meyer have a legitimate claim of entitlement to employment or a reasonable expectation of continued employment arising out of an implied contract with Fidelity?

YES ☒ NO ☐

If your answer to this question is "Yes", proceed to answer Question 2. If your answer is "No", sign and return this Verdict.

2. Was John Meyer discharged from his employment by the FSLIC and/or Robert L. Pattullo?

YES ☒ NO ☐

If your answer to this question is "Yes", proceed to answer Question 3. If your answer to Question 2 is "No", sign and return this Verdict.

3. Did the FSLIC and/or Robert L. Pattullo fail to provide John Meyer a hearing, the reasons for his dis-

charge, and an opportunity to contest the reasons for his discharge before his termination?

YES ☒ NO ☐

4. Do you find that defendant Robert Pattullo was acting within the scope of his employment at the time he terminated plaintiff?

YES ☒ NO ☐

If your answer is "Yes", go to Question 5. If your answer to this question is "No", sign and return this Verdict.

5. Was John Meyer damaged as a result of the discharge from his employment?

YES ☒ NO ☐

If your answer to this question is "Yes", proceed to answer Question 6. If your answer is "No", sign and return this Verdict.

6. What is the total amount of damages suffered by John Meyer as a result of his discharge from employment?

\$130,000.00

If you award damages go to Question 7.

7. At the time Robert Pattullo terminated plaintiff, was he immune from any liability under the doctrine of qualified immunity?

YES ☒ NO ☐

Dated: September 19, 1989

/s/ Marie V. Machado
Foreperson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-2204 JPV (FW)

JOHN H. MEYER, PLAINTIFF

v.

FIDELITY SAVINGS AND LOAN ASSOCIATION, ET AL.,
DEFENDANTS

JUDGMENT ON JURY VERDICT

[Filed Sep. 20, 1989]

The jury by a special verdict having found that plaintiff, John H. Meyer is entitled to damages in the sum of \$130,000 as a result of his discharge from employment by the defendants, Federal Savings and Loan Insurance Corporation and Robert L. Pattullo and having further found that defendant Robert L. Pattullo is immune from liability under the doctrine of qualified immunity.

IT IS HEREBY ORDERED that judgment in the sum of \$130,000 be entered in favor of the plaintiff, John H. Meyer against the defendant, Federal Savings and Loan Insurance Corporation only and that judgment be entered in favor of the defendant, Robert L. Pattullo and against the plaintiff, John H. Meyer.

IT IS SO ORDERED.

Dated: September 20, 1989

/s/ Frederick J. Woelflen
FREDERICK J. WOELFLEN
Chief United States Magistrate

SUPREME COURT OF THE UNITED STATES

No. 92-741

FEDERAL DEPOSIT INSURANCE CORPORATION,
PETITIONER

v.

JOHN H. MEYER, ET AL.

ORDER ALLOWING CERTIORARI

Filed March 22, 1993

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

March 22, 1993